

and enforcement of HO 12, with respect to cardboard balers and compactors that commonly are used in supermarkets, grocery stores, and other retail establishments, for preparing and bundling cardboard and paper materials for recycling purposes.

DOL's current interpretation of HO 12 goes so far as to prohibit minors from placing, tossing, or loading cardboard or paper materials into a baler or compactor. Such activities take place during a loading phase that is prior to, and separate from, the actual operation of the machine. While such a loading-phase prohibition may have made sense back in 1954, when HO 12 was originally issued, such is not the case today.

Technology has brought about significant safety advancements to balers and compactors. Much like a household microwave oven or trash compactor, the newest generation of balers now in use in grocery stores and other locations cannot be engaged and operated during the loading phase.

This important design feature is a result of safety standards issued by the American National Standards Institute [ANSI]. An employee is not at risk when placing cardboard materials into a baler that is in compliance with ANSI standards Z.245.5 1990, or putting paper materials into a compactor that is in compliance with ANSI standards Z245.2 1992.

Nonetheless, DOL treats all balers and compactors the same, and considers the placement of materials into these machines, if performed by a minor, to be a clear-cut violation of HO 12. Each violation can result in a fine of \$10,000 against an employer.

If DOL could produce injury data showing that workers are at risk when loading materials into a machine that meets current ANSI standards, I might agree that the current interpretation and enforcement of HO 12 is warranted. However, DOL has acknowledged that it has no injury data for balers that meet the ANSI standard.

Despite the complete lack of evidence that workers are at risk in these situations, DOL has cited numerous supermarkets throughout the United States and has assessed several million dollars in fines against grocery owners in recent years.

It is difficult to understand the logic behind this kind of enforcement when, in fact, a review of 8,000 compensation cases involving injuries over the past 7 years by the Waste Equipment Technology Association failed to find a single injury attributable to a baler that meets current ANSI safety standards.

The present, rigid interpretation of HO 12 is bad regulatory policy and should not continue. It benefits no one, especially workers. Worker protection is not enhanced by issuing large fines against employers that use balers meeting current safety standards.

Such a policy also is clearly inconsistent with the goal of creating employment opportunities for young people.

Because so many grocers have been fined by DOL for loading violations, the industry has become less inclined to hire younger workers.

Originally, DOL applied this interpretation of HO 12 to cardboard balers. As burdensome and objectionable as this policy has been, concerning cardboard balers, DOL more recently went a step farther and now is applying the same interpretation to compactors, a similar piece of equipment that retail establishments use to recycle paper materials.

Without the benefit of formal rule-making and the opportunity for interested parties to file comments, DOL extended the jurisdiction of HO 12 to compactors at the beginning of 1994, and employers found themselves subjected to fines when it was documented that a minor had placed materials into a compactor.

This is one more example of the "speed trap" mentality of Federal agencies, and the Department of Labor, in particular. Balers and compactors are both governed by ANSI safety standards and cannot be engaged or operated during the loading phase. This means, to re-emphasize, that employees loading machines meeting ANSI standards are not at risk.

Clearly, DOL's position on HO 12, as it relates to cardboard balers and compactors, is not in step with the technology being used in the workplace. In view of the fact that this equipment can not be operated during the loading phase, there is no compelling reason to continue treating the placement of materials by minors a violation of HO 12.

The old joke goes that, when something is difficult to accomplish, you compare it to passing an Act of Congress. If there is one process more intractable, it must be modernizing Federal agency regulations.

HO 12 needs to be revised so that the placement of paper or cardboard materials into a baler or compactor that meets its respective ANSI safety standards by an employee under age 18 is no longer a violation of the regulation. The loading phase should be completely distinguished from the operating phase of the machine.

While DOL has solicited comments on its child labor regulations, in general, Congress does not need to, and should not, wait any longer for this one, simple revision to HO 12. Throughout at least two administrations, DOL has promised to reconsider the rule. Their latest offering is the goal of issuing a new, final regulation by February 1996, even though we have yet to see a proposed revision to the rule.

We don't need months of agency hearings and reams of paper. I've seen these grocery store balers operate. What's needed is a simple, common-sense change, and the bill I'm introducing today would make that change in a simple, straightforward way.

The many young people who will not have summer jobs this year under DOL's status quo interpretation of HO

12 should not have to wait another year or more for the glacier-like process of regulatory change to catch up with technology.

By promptly acting on the bill I'm introducing today, we can open up thousands of youth summer job opportunities without relying on government programs and grants.

The jobs are there. The young people are there. All we need to do is remove one, unnecessary, regulatory wall between them.

This bill would provide a narrow amendment to the Fair Labor Standards Act that would overrule DOL's interpretation of HO 12 in the limited and appropriate way I've described. My bill would not change the critically important safety focus of the regulation. In fact, I agree that DOL should remain vigilant and enforce the regulation in case when the safety of young workers is compromised by use of equipment that does not meet current ANSI safety standards.

The bill would provide only that young workers would be allowed to operate balers and compactors that meet the current industry standards that ensure complete safety in their operation.

Mr. President, I ask unanimous consent to print the text of my bill in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 744

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Compactors and Balers Safety Standard Modernization".

#### SEC. 2. AUTHORITY FOR MINORS TO LOAD MATERIALS INTO BALERS AND COMPACTORS.

In the administration of the child labor provisions of the Fair Labor Standards Act of 1938, minors under 18 years of age shall be permitted to—

(1) load materials into baling equipment that is in compliance with the American National Standards Institute safety standard ANSI Z245.5 1990, and

(2) load materials into a compactor that is in compliance with the American National Standards Institute safety standard ANSI Z245.2 1992.

#### ADDITIONAL COSPONSORS

S. 191

At the request of Mrs. HUTCHISON, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of S. 191, a bill to amend the Endangered Species Act of 1973 to ensure that constitutionally protected private property rights are not infringed until adequate protection is afforded by reauthorization of the act, to protect against economic losses from critical habitat designation, and for other purposes.

S. 227

At the request of Mrs. FEINSTEIN, the name of the Senator from Montana

[Mr. BAUCUS] was added as a cosponsor of S. 227, a bill to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions and for other purposes.

S. 383

At the request of Mr. WARNER, the names of the Senator from Pennsylvania [Mr. SPECTER] and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 383, a bill to provide for the establishment of policy on the deployment by the United States of an antiballistic missile system and of advanced theater missile defense systems.

S. 388

At the request of Ms. SNOWE, the names of the Senator from Montana [Mr. BURNS] the Senator from Wisconsin [Mr. FEINGOLD], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 388, a bill to amend title 23, United States Code, to eliminate the penalties for noncompliance by States with a program requiring the use of motorcycle helmets, and for other purposes.

S. 511

At the request of Mr. DOMENICI, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 511, a bill to require the periodic review and automatic termination of Federal regulations.

S. 578

At the request of Mr. D'AMATO, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 578, a bill to limit assistance for Turkey under the Foreign Assistance Act of 1961 and the Arms Export Control Act until that country complies with certain human rights standards.

S. 637

At the request of Mr. MCCAIN, the names of the Senator from Michigan [Mr. ABRAHAM] and the Senator from North Carolina [Mr. FAIRCLOTH] were added as cosponsors of S. 637, a bill to remove barriers to interracial and interethnic adoptions, and for other purposes.

#### SENATE JOINT RESOLUTION 31

At the request of Mr. HATCH, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of Senate Joint Resolution 31, a joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

#### SENATE RESOLUTION 85

At the request of Mr. CHAFEE, the names of the Senator from South Dakota [Mr. PRESSLER] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of Senate Resolution 85, a resolution to express the sense of the Senate that obstetrician-gynecologists should be included in Federal laws relating to the provision of health care.

#### AMENDMENTS SUBMITTED

#### THE COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995 COMMON SENSE PRODUCT LIABILITY REFORM ACT OF 1995

#### DOLE (AND OTHERS) AMENDMENT NO. 617

Mr. DOLE (for himself, Mr. EXON, Mr. HATCH, Ms. SNOWE, Mr. MCCONNELL, Mr. ABRAHAM, Mr. KYL, Mr. THOMAS, Mrs. HUTCHISON, Mr. GRAMM) proposed an amendment to amendment No. 596 proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

On page 19, strike line 12 through line 5 on page 21, and insert the following:

#### SEC. 107. PUNITIVE DAMAGES IN CIVIL ACTIONS.

(a) FINDINGS.—The Congress finds that—

(1) punitive damages are imposed pursuant to vague, subjective, and often retrospective standards of liability, and these standards vary from State to State;

(2) the magnitude and unpredictability of punitive damage awards in civil actions have increased dramatically over the last 40 years, unreasonably inflating the cost of settling litigation, and discouraging socially useful and productive activity;

(3) excessive, arbitrary, and unpredictable punitive damage awards impair and burden commerce, imposing unreasonable and unjustified costs on consumers, taxpayers, governmental entities, large and small businesses, volunteer organizations, and non-profit entities;

(4) products and services originating in a State with reasonable punitive damage provisions are still subject to excessive punitive damage awards because claimants have an economic incentive to bring suit in States in which punitive damage awards are arbitrary and inadequately controlled;

(5) because of the national scope of the problems created by excessive, arbitrary, and unpredictable punitive damage awards, it is not possible for the several States to enact laws that fully and effectively respond to the national economic and constitutional problems created by punitive damages; and

(6) the Supreme Court of the United States has recognized that punitive damages can produce grossly excessive, wholly unreasonable, and often arbitrary punishment, and therefore raise serious constitutional due process concerns.

(b) GENERAL RULE.—Notwithstanding any other provision of this Act, in any civil action whose subject matter affects commerce brought in any Federal or State court on any theory, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant only if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct by the defendant that was either—

(1) specifically intended to cause harm; or

(2) carried out with conscious, flagrant disregard to the rights or safety of others.

(c) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded to a claimant in any civil action subject to this section shall not exceed 2 times the sum of—

(1) the amount awarded to the claimant for economic loss; and

(2) the amount awarded to the claimant for noneconomic loss.

This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such an award. If a separate proceeding is requested—

(1) evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded; and

(2) evidence admissible in the punitive damages proceeding may include evidence of the defendant's profits, if any, from its alleged wrongdoing.

(e) APPLICABILITY.—Nothing in this section shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by the United States, or by any State, under any law;

(2) create any cause of action or any right to punitive damages;

(3) supersede or alter any Federal law;

(4) preempt, supersede, or alter any State law to the extent that such law would further limit the availability or amount of punitive damages;

(5) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(6) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(7) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

(f) FEDERAL CAUSE OF ACTION PRECLUDED.—Nothing in this section shall confer jurisdiction on the Federal district courts of the United States under section 1331 or 1337 of title 28, United States Code, over any civil action covered under this section.

(g) DEFINITIONS.—For purposes of this section:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(2) The term "clear and convincing evidence" means that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard shall be more than that required under preponderance of the evidence, and less than that required for proof beyond a reasonable doubt.

(3) The term "commerce" means commerce between or among the several States, or with foreign nations.

(4)(A) The term "economic loss" means any objectively verifiable monetary losses resulting from the harm suffered, including past and future medical expenses, loss of past and future earnings, burial costs, costs of repair or replacement, costs of replacement services in the home, including child care, transportation, food preparation, and household care, costs of making reasonable accommodations to a personal residence, loss of employment, and loss of business or employment opportunities, to the extent recovery for such losses is allowed under applicable State law.

(B) The term "economic loss" shall not include noneconomic loss.